HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

WRIT PETITION No.42391 of 2017

ORDER:

This writ petition is filed seeking verbatim the following relief/s:

> **'…to issue appropriate Writ, order or direction, especially one in the nature of a Writ of Mandamus declaring the action of the respondent in straightaway disconnecting power supply and locking the tower erected on the terrace of H.No.14-20-677/N/44/1, new Vivekananda Nagar, J.P.Hills, Kukatpally, Balanagar, Hyderabad for non-payment of alleged property tax as per demand notice dated 18.11.2017 without issuing any notice whatsoever to the petitioner company, as, arbitrary, illegal, without jurisdiction, contrary to the provisions of the Greater Hyderabad Municipal Corporation Act, 1955, and rules made thereunder and in utter violation of well settled principles of natural justice and to pass such other order or orders as are deemed fit and proper in the circumstances of the case.'**

At the hearing, learned counsel for the petitioner and learned standing counsel representing the respondents 1 & 2 are in agreement that the issue involved in the present writ petition is squarely covered by the Division Bench order, dated 10.06.2015, of this Court in W.P.No.7163 of 2015, which was passed in terms of the interim order, dated 20.03.2015. The said interim order reads as under:

> 'The petitioner is owner of a cell tower, which has been installed on rooftop of a building owned by a third party. Without issuing any notice initially to the writ petitioner for demanding property tax in relation to the tower only, action was taken and this action was intervened by this Court, on a writ petition having been filed, and passed an order asking the Municipal Corporation to give hearing to the petitioner as well as the owner of the building. After giving such hearing, a decision has been taken by passing a speaking order. It is decided that tower itself is exigible to property tax. However, no tax amount has been quantified as yet. Therefore, question of recovery does not and cannot arise. Before this stage reaches, the Municipal Corporation has taken coercive measure by disconnecting the electricity supply line in purported exercise of power under Section 269(2) of the Greater Hyderabad Municipal Corporation Act, 1955, which is set out hereunder:
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> > "269.(2) If after the service of the notice of demand the amount of the said tax is paid but the fee for the notice is not paid, the sum due on account of the said fee may be levied under a warrant in the form of

> Schedule L, *mutalis mutandis* as if such sum were due on account of the tax:
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> Provided that a simple interest at the rate of two per cent per mensum shall be charged in case of failure to pay property tax within the due date:
>
> Provided further that when payment of property tax is not made within the due date, the Commissioner may, after giving notice to the owner or occupier, disconnect the essential services to the premises.

> We have decided a similar matter earlier observing that essential services which have been provided by the Corporation itself can be disconnected if tax amount is not paid, but not the services provided by third parties. In this case, admittedly the Municipal Corporation has not supplied electricity to the petitioner and it is for the electricity company to take measure to disconnect electricity supply, and no third party can interfere and enter into electrical equipments installed in premises in question. We fail to understand how without permission of the licensee or the electricity company municipal authority can take such action. Therefore, it would be open for the writ petitioner as well as the electricity company concerned to take action, both under civil law and criminal law, against officials of the Municipal Corporation. We are told that electricity connection has been restored again by the Municipal Corporation, again interfering with the instalment not having any authority under the law. We therefore restrain the Municipal Corporation from making any attempt to disconnect electricity supply to the writ petitioner. However, it would be meanwhile, it would be open for the Municipal Corporation to quantify the tax payable by the writ petitioner. In spite of quantification and demand being made, if the tax amount is not paid, obviously recovery proceedings may be initiated in accordance with law.'

Having regard to the facts and submissions and for the reasons alike as were mentioned in the afore-stated interim order, this Writ Petition is disposed of in terms of the said order and on the same lines. As a sequel to this order, the power supply to the subject tower shall be restored if not already restored.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

M. SEETHARAMA MURTI, J

15.12.2017
Vjl